

OGC 76-0339
21 January 1976

MEMORANDUM FOR THE RECORD

SUBJECT: January ICRC Meeting

1. Chairman Rhoads announced at today's meeting that he has appointed Bob Wells as Executive Director of ICRC succeeding Bill Brown who has returned to ERDA several weeks ago. Dr. Rhoads also expressed the appreciation of the Committee for the work

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2. Bob Wells asked member agencies to submit any items of accomplishment which would be appropriate for inclusion in the annual report of ICRC.

3. Mr. Wells also reported that the Abzug committee staff people advise that the committee is beginning work on legislation to establish a statutory classification system. Among the items the committee will be interested in is derivative classification. The Abzug staffer indicated to Bob that the committee may forego hearings but instead proceed on the basis of consultation with the agencies involved.

4. The December minutes were approved.

5. With reference to the [] appeal (AP 75-116), [] announced that General Scowcroft has approved the declassification of the last paragraph of NSC 8 and the declassification of NSC 8/1 and NSC 8/2. The [] appeal to the Committee therefore was moot and no action was needed.

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6. With reference to the [] appeal (AP 75-117) on the CIA denial of certain documents, Mr. O'Neill, Deputy Archivist, advised that documents donated and in the possession of Presidential libraries are not subject to the Freedom of Information Act. The action of ICRC at the December meeting postponing further ICRC work on the declassification question, pending a CIA

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decision to release or withhold under other FOI exemptions, therefore was inappropriate. It was agreed that the next order of business therefore is for CIA to furnish to ICRC the relevant correspondence and documents, and we are asked to do this by 28 January. I indicated I anticipated no difficulty in this regard.

7. The proposed ICRC letter to executive departments concerning security classification markings (item 3.c. on the agenda) and the other proposals at item 3.c. were deferred until the next meeting. Members are invited to suggest changes in the proposed letter and on item 3.c. generally.

8. At item 3.d. of the agenda, it was proposed that ICRC mandate the use by agencies and departments of some 27 forms for the handling of classified documents. An ICRC regulation for publication in the Federal Register establishing and requiring use of such forms also was before the Committee. The proposed regulation is also designed to formalize the existing ICRC requirement for quarterly and annual reports which agencies have been submitting to ICRC beginning in early 1973. Some of the reports have been revised and the new regulation would substitute the revised reports for the earlier forms. State and ERDA had objected in writing to the mandatory use of the 27 new forms, and I also voiced CIA objection. After some discussion, it was decided to cut down the new regulation to simply amend the existing ICRC regulation (chapter XX of title 32 of the CFR's) to require the submission of the revised quarterly and annual reports. At the February meeting, ICRC is to consider the matter of requiring the use of the additional 27 forms.

9. The Committee agreed by a four to three vote to accept the [] appeal (AP 75-118) notwithstanding that the documents have been withheld from [] by NSA on the basis of several Freedom of Information exemptions additional to exemption (1). Initially the Committee by a four to three vote agreed to refuse to accept the appeal, I believe largely on my suggestion that the Committee might better use its time than to concern itself with the classification or declassification of documents which in any event the requester is not going to get. It was noted also that [] has not sued and, if he does so, the Committee at that time could consider whether it would consider the appeal. In this connection, the Department of Justice has advised that ICRC review of classified documents would be helpful when the litigation of an exemption (1) question occurs. After the first vote, the Justice member began to wonder whether the Committee could reverse itself at a later date and accept an appeal for review after having declined to accept it. The Justice member changed his vote and the motion accordingly was passed.

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10. The Committee approved an ICRC staff report on the program review of the General Services Administration.

11. The Committee accepted the [] appeal (AP 76-101) and also considered the two documents involved. It was agreed to uphold the DOD denial of one document and to furnish to [] the sanitized version of the second document which DOD had not furnished on the theory that as sanitized it was not useful. The vote was made subject to any change by members in the next few days. I am advised today that NSC has voiced its opposition to release of even the sanitized version of the second document. I have indicated we would support the NSC position.

12. The attached is a copy of the January agenda to which the above comments are addressed.

[]

Associate General Counsel

Attachment

cc: DDA
AI/DDA
C/Services Staff

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AGENDA FOR JANUARY MEETING

ACTING CHAIRMAN:

DR. JAMES B. RHOADS

1. Announcements

2. Minutes of the December 1975 Meeting

3. Old Business

- a. AP-75-116 [REDACTED]. Mandatory review appeal from the NSC denial for declassification of NSC 8/1. At the November 1975 meeting the Committee voted to have the ICRC staff request clarifying information from [REDACTED] regarding the exact nature of his request, i.e., whether he desires to appeal the decision of the NSC to deny the declassification of the one remaining paragraph of NSC 8, or to appeal the NSC denial of NSC 8/1. In a letter dated January 6, 1976, [REDACTED] appealed the NSC denial of both NSC 8/1 and the one remaining paragraph of NSC 8. The Committee must decide whether or not to accept the appeal.
- b. AP-75-117 [REDACTED] Mandatory review appeal from the CIA Departmental Review Committee decision to deny declassification of 19 documents on Vietnam. The appeal was accepted for review by the ICRC at its November 1975 meeting and [REDACTED] was informed of this fact. At the request of the CIA Member, action on this item was deferred until the January meeting pending further review of the information by CIA officials and receipt of comments by the Department of Justice Litigation Department regarding ICRC acceptance of appeals involving information which is withheld because of the applicability of other exemptions provided for in the FOIA, as amended, in addition to 5 U.S.C. 552 (b)(1). A copy of the comments provided by the Civil Division, Department of Justice, is at Enclosure 1.

c. Security Classification Markings. At Enclosure 2 is a copy of the final version of the proposed memorandum developed by the ICRC Work Group regarding security classification and access control markings authorized by Executive Order 11652. The enclosed version has been coordinated with and concurred in by Work Group members. Approval by the Committee is required prior to dissemination of the Memorandum to the heads of departments and agencies specified in sections 2(A) and 2(B), Executive Order 11652, as amended. In addition to the proposed Memorandum, the Work Group submitted the following recommendations for consideration at the time future changes are made to the Executive Order:

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- (1) That consideration be given to the development of standard marking procedures throughout the Executive Branch to identify that information which is withheld from public release under the exemptions provided for in the Freedom of Information Act, as amended, other than 5 U.S.C. 552 (b)(1).
 - (2) That consideration be given to establishing a mandatory requirement for the application of the marking "National Security Information" on all information or material classified pursuant to the Executive Order.

d. Proposed Standard and Optional Forms. At Enclosure 3 is a copy of a proposed regulation pertaining to ICRC organization, responsibilities, procedures, reports, and Standard and Optional Forms to be placed in the Code of Federal Regulations. Committee approval of the proposed regulation is required.

A Standard Form must be promulgated by a Federal agency having regulatory authority to prescribe the form for mandatory use. A Standard Form is mandatory for use unless an official exception is approved by the promulgator and NARS.

The proposed regulation contains information pertaining to the revised ICRC quarterly report requirements and forms approved by the Committee in October 1975. Original versions of these forms were promulgated by the Committee in 1973 and 1974 without having a prescribing regulation. This action was in violation of FPMR 101-11.802-2. Revision of Regulation 32 CFR XX in accordance with the proposed regulation will correct this error.

In addition to the standard quarterly report forms, the proposed regulation prescribes the use of thirteen Standard Forms and one Optional Form for the handling and control of classified information and material. The selection of these forms for standard and optional use was based on the consensus of those comments furnished by member departments. It should be pointed out that, except for the receipt form relating to the release of classified information to accredited foreign representatives, no other receipt forms were proposed for standardization. The staff was informed that action is continuing on the development of a single receipt form to replace the five separate receipt forms upon which members were asked to comment. The single receipt form will be considered by the Committee for standardization at a later date.

ICRC promulgation of these Standard Forms is consistent with the goals of the recently created Presidential Commission on Federal Paperwork. Moreover, it is essential that this regulation be published as soon as possible to permit printing and dissemination of the revised quarterly report forms prior to the end of the first quarter of CY 1976.

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- e. AP-75-118 ☐. Freedom of Information Act appeal from the National Security Agency Freedom of Information Appeal Authority decision to deny declassification of portions of Volumes II and III of the Historical Background of the Signal Security Agency. At the December meeting the Committee decided to delay action on this item pending the receipt of the comments of the Department of Justice regarding ICRC acceptance of appeals involving information which is withheld because of the applicability of other exemptions provided for in the FOIA, as amended, in addition to 5 U.S.C.552 (b) (1). A copy of those comments is at Enclosure 1. At Enclosure 4 is a copy of a letter from NSA providing that Agency's position on ICRC acceptance of this appeal. The Committee must decide whether or not to accept the appeal.

4. New Business

- a. Staff Review Report. Consideration of staff report on program review of General Services Administration. (Enclosure 5)
- b. AP-76-101 ☐ Mandatory review appeal from the decision of the Department of Defense Classification Review Committee to deny declassification of two 1964 messages. The appellant
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5. Adjournment